

FILED

IN THE CHANCERY COURT FOR DAVIDSON COUNTY TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, SITTING IN NASHVILLE

CLERK & MASTER  
DAVIDSON CO. CHANCERY CT.

DC 14

STATE OF TENNESSEE, ex rel. )  
PAULA A. FLOWERS, )  
 )  
Petitioner, )  
 )  
v. ) No: 99-917-II  
 )  
XANTUS HEALTHPLAN OF )  
TENNESSEE, )  
 )  
Respondent. )

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MOTION TO CONVERT REHABILITATION TO LIQUIDATION AND VERIFIED  
PETITION FOR FINAL ORDER OF LIQUIDATION, DECLARATION OF  
INSOLVENCY AND PERMANENT INJUNCTION

Paula A. Flowers, Commissioner of Commerce and Insurance of the State of Tennessee ("Commissioner"), in her official capacity in this action, and acting as Rehabilitator for Xantus Healthplan of Tennessee, Inc. ("XHT," "Respondent" or "insurer"), a Tennessee for-profit health maintenance organization, upon having determined that the condition of XHT's finances remains hazardous, that XHT is insolvent, and that continuation of attempts to rehabilitate XHT would substantially increase the risk of loss to creditors, policyholders and the public, and would be futile, hereby moves by verified petition pursuant to Tenn. Code Ann. §§ 56-9-305, 306, 307(d) and Tenn. Code Ann. §§ 56-32-212(a)(7) and 217 for a declaration of insolvency, to convert this rehabilitation receivership into a liquidation, and for entry of a Final Order of Liquidation.

## I. INTRODUCTION.

1. Petitioner Paula A. Flowers is the duly-appointed Commissioner of Commerce and Insurance for the State of Tennessee and the statutory rehabilitator of XHT. Pursuant to the Tennessee Insurers Rehabilitation and Liquidation Act (hereinafter "the Act"), Tenn. Code Ann. §§ 56-9-101, et seq., the liquidation of a domestic insurer such as XHT is to be conducted by the Commissioner and her successors in office after her appointment as liquidator by the Court. See Tenn. Code Ann. §§ 56-9-305 and 306, et seq.

2. The Commissioner requests entry of a Final Order of Liquidation, the terms of which are set forth in the prayer hereto. The requested Liquidation Order would contain terms applicable to final orders of liquidation under the Act, and appoint the Commissioner and her successors in office as statutory liquidator of XHT. Further, the requested Liquidation Order would establish notice procedures and a claims bar date, and replace the temporary injunction with a permanent injunction authorized by Tenn. Code Ann. § 56-9-105. A permanent injunction and other provisions of the Act will prevent interference with the conduct of the duties of the receiver and aid in achieving an orderly and conclusive liquidation of XHT.

3. This action continues properly before the Chancery Court of Davidson County, with jurisdiction and venue established by Tenn. Code Ann. §§ 56-9-104, 305 and 306.

4. This petition is brought under Tenn. Code Ann. § 56-9-305(a), which establishes the requirements and means for converting a rehabilitative receivership into a proceeding for the liquidation of an insurer:

[w]henver the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, the commissioner may petition the chancery court of Davidson County for an order of liquidation. A petition under this subsection has the same effect as a petition under § 56-9-306. The chancery court of Davidson County shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.

Tenn. Code Ann. § 56-9-305(a).

5. This petition is also brought pursuant to Tenn. Code Ann. § 56-9-306, which provides that the Commissioner may request liquidation, regardless of whether there has been any prior order directing rehabilitation of the insurer, as follows:

The commissioner may petition the chancery court of Davidson County for an order directing the commissioner to liquidate a domestic insurer . . . on the basis:

(1) Of any ground for an order of rehabilitation as specified in § 56-9-301, whether or not there has

been a prior order directing the rehabilitation of the insurer;

(2) That the insurer is insolvent; or

(3) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public.

Tenn. Code Ann. § 56-9-306 (emphasis added).

6. Among other grounds for liquidation pursuant to Tenn. Code Ann. § 56-9-306(1), Tenn. Code Ann. § 56-9-301 provides that the Commissioner may apply to rehabilitate (and, by virtue of Tenn. Code Ann. § 56-9-306, to liquidate) an insurer if, among other reasons, "[t]he insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors or the public." Tenn. Code Ann. § 56-9-301(1).

7. For purposes of Tenn. Code Ann. § 56-9-306(2), an insurer is considered insolvent if:

(B) . . . it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities, plus the greater of:

(i) Any capital and surplus required by law for its organization; or

(ii) The total par or stated value of its authorized and issued capital stock;

. . .

(D) . . . "liabilities" include, but are not limited to, reserves required by statute or by department

general regulations or specific requirements imposed by the commissioner. . . .

Tenn. Code Ann. § 56-9-103(11).

8. In addition, every health maintenance organization operating in the State must comply with the net worth requirements set forth in the Tennessee Insurance Code. See Tenn. Code Ann. § 56-32-212. If the net worth of an HMO falls below the statutory minimum, and has not been corrected, the Commissioner has the authority to suspend that HMO's certificate of authority, see Tenn. Code Ann. §§ 56-32-212(a)(7) and 216, and the further authority to petition this Court for rehabilitation or liquidation pursuant to Chapter 9 of the Insurance Code. See Tenn. Code Ann. §§ 56-32-212(a)(7) and 217. Specifically, if the net worth of an HMO falls below the statutory minimum, the Commissioner may petition for liquidation if

(C) The commissioner determines that an improper working capital or net worth status cannot be corrected within a reasonable time; or

(D) The commissioner determines that an organization is in such financial condition that the transaction of further business would be hazardous to its enrollees, its creditors, or the public.

Tenn. Code Ann. § 56-32-212(a)(7)(C)-(D) (emphasis added).

9. This petition is further authorized by paragraph 14 of the Consent Order Appointing the Commissioner as Receiver for Purposes of Rehabilitation ("Rehabilitation Order").

10. The Commissioner further requests a declaration by this Court that XHT is insolvent. Such a declaration is authorized by Tenn. Code Ann. § 56-9-307(d), which states:

[a]t the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper, the court may make the declaration.

Tenn. Code Ann. § 56-9-307(d).

## **II. GROUNDS FOR LIQUIDATION OF XHT.**

11. The Commissioner has reasonably determined, based on the circumstances present here, that an order of liquidation of XHT is necessary.

### **A. Insolvency of XHT.**

12. As recited in the Rehabilitation Order, XHT was placed in receivership on March 31, 1999, in part because of an admitted negative net worth of \$24,353,188.00, which XHT had not corrected. See Rehabilitation Order at 1, ¶1. Consequently, XHT failed to maintain a positive net worth at a level required by Tenn. Code Ann. § 56-9-212(a). See id.

13. As the rehabilitation proceedings progressed, the magnitude of XHT's insolvency became more fully known. In a Proposal for Continued Rehabilitation filed on June 17, 1999 (i.e., less than three months into the receivership), Sam Howard (the sole director of XHT) and Xantus Corporation (the parent and sole stockholder of XHT) estimated XHT's debt to be in excess of \$52 million. See Proposal for Continued Rehabilitation (filed 6/17/99) at 5.

14. On September 2, 1999, the Receiver submitted a Proposed Plan for Operation and Reorganization of XHT (filed 9/2/99). In this Proposed Plan, the Receiver reported the pre-rehabilitation debt figure as exceeding \$80 million. See Receiver's Proposed Plan at 5. As part of the "transition phase" of the Proposed Plan, the Special Deputies outlined a procedure to partially pay this provider debt via a \$30,000,000 loan from the State. See id. at 4. Mr. Howard did not object to this submission.

15. On October 28, 1999, the Special Deputies filed a Proposed Plan for Payment of Pre-Rehabilitation Provider Debt. This Proposed Payment Plan further set forth the procedure for the partial payment of provider debt as part of the transition phase. Contemporaneously with the Proposed Payment Plan, the Special Deputies furnished the Court with a schedule of XHT's pre-rehabilitation debt broken down on a provider-by-provider

basis. This schedule was prepared as a result of a claims submission process authorized by the Court, pursuant to the Court's Scheduling Order of September 28, 1999, which required all creditors to submit all pre-receivership claims no later than October 4, 1999. Notice was sent to each and every provider regarding that provider's debt. Each provider was given an opportunity to respond and to object to the debt estimate.

16. Numerous providers objected to the value of their claims, and these objections were resolved by the Receiver. In addition, MIM (the pharmacy network coordinator for XHT) lodged an objection to the Special Deputies' debt calculation, which was resolved by the Court. Sam Howard raised no objection to this calculation in the Chancery Court or in the Court of Appeals. Instead, on October 1, 1999, Xantus Corporation filed with the Court a Notice of Claim, seeking "all amounts due to it for any matter arising prior to the date of the entry of the Order of Rehabilitation," including alleged management fees.

17. The schedule submitted to the Court also contained a partial payment figure on a provider-by-provider basis. These payments reflected a pro-rata distribution of the loan proceeds based on the overall pre-rehabilitation debt figure.

18. In its Memorandum and Order of November 16, 1999, the Court accepted this pre-rehabilitation debt figure, see



Memorandum and Order at 9-10, and "approved" the transition phase of the plan. Id. at 15. See also State of Tennessee, ex rel., Pope v. Xantus Healthplan of Tennessee, Inc., 2000 WESTLAW 630858 at \*9 (Tenn. App. 2000). As part of that approval, the Court approved the payment of "pre-rehabilitation claims from the \$30,000,000 [loan] . . . in the fashion suggested by the Rehabilitators" on a "pro-rata" basis. Memorandum and Order at 15. Moreover, *de minimis* provider claims were paid -- not on a pro rata basis -- but at a rate of 100%. In doing so, the Court accepted the pre-rehabilitation debt figure as calculated by the Receiver and Special Deputies.

19. Thereafter, pro rata distributions of the loan and certain assets of XHT to creditors were made, based directly upon that debt figure. Mr. Howard did not object to these distributions.

20. As of March 31, 2003, XHT has a negative net worth of \$74,582,492.00. See Affidavit of Special Deputy Chris Burton at ¶ 6 (attached as Exhibit 1). Accordingly, XHT is insolvent under Tenn. Code Ann. § 56-9-103(11).

#### **B. Insufficient Net Worth.**

21. In addition to its insolvency, XHT is below the net worth requirements set forth in Tenn. Code Ann. § 56-9-212. As recited in the Rehabilitation Order, prior to the initiation of

receivership proceedings XHT was unable to maintain a positive net worth in the amount of \$7,617,742, as required by that statute. During the pendency of the rehabilitation, and currently, XHT has been unable to meet the net worth requirements of Tenn. Code Ann. § 56-32-212(a).

22. Presently, XHT must maintain a positive net worth of \$8,820,978.00 to comply with Tenn. Code Ann. § 56-32-212(a). Pursuant to Tenn. Code Ann. § 56-32-212(a)(7)(C) and (D), and for the reasons set forth below, the Commissioner has determined that XHT cannot correct its net worth status within a reasonable time, and that the further transaction of XHT's business would be hazardous to its enrollees, its creditors and the public.

### **C. Futility.**

23. Beginning in 2001, the Receiver and Special Deputies received inquiries from, and -- in certain circumstances -- entered into negotiations with, third parties regarding the potential sale of XHT. It was the intent of the Receiver and Special Deputies that the proceeds of the sale of XHT would be used to reduce the outstanding debt of the company to its creditors and provide sufficient capital for XHT to meet its statutory net worth requirements. Unfortunately, due to changes in the TennCare program itself and decisions rendered by the U.S. District Court for the Middle District of Tennessee, the

Receiver and Special Deputies were unable to secure an acceptable offer to purchase XHT. Presently, there are no offers to purchase XHT, and there is no reasonable possibility of selling XHT at a price sufficient to reduce the outstanding debt of the company to its creditors and provide sufficient capital for XHT to meet its statutory net worth requirements. See Burton Affidavit at ¶ 8.

24. In addition, and as reported to the Court in the Notice of Termination of Contractor Risk Agreement (filed 4/30/03), the Receiver has been advised by the Tennessee Department of Finance and Administration that the TennCare Bureau will terminate XHT's Contractor Risk Agreement effective July 31, 2003. To this end, the TennCare Bureau has notified XHT providers, hospitals and pharmacists that, effective July 31, 2003, XHT will no longer be participating in the TennCare program. See Burton Affidavit at ¶ 4. The Department of Finance and Administration further advised the Receiver to prepare and submit a termination plan to the TennCare Bureau, with respect to re-assignment of XHT enrollees and other wind-down issues.

25. Currently, XHT receives 100% of its revenue from the State's TennCare program. Upon the termination of the Contractor Risk Agreement, XHT will have no further source of revenue to conduct business on an on-going basis. For this

reason, the Receiver submits that further attempts to rehabilitate XHT would substantially increase the risk of loss to creditors, policyholders or the public, and would be futile. See Tenn. Code Ann. § 56-9-305(a).

**D. Hazard to Creditors and the Public.**

26. Because of its insolvency, its inability to meet its statutory net worth requirements, and its inability to generate revenue upon the cancellation of the Contractor Risk Agreement, the Commissioner has determined that XHT is in such condition that further transaction of its business would be hazardous financially and otherwise to the insurer's policyholders, creditors and the public. This determination, based on the financial condition of the company and the unsuccessful efforts to rehabilitate XHT to date, supports conversion of the rehabilitation into a liquidation under Tenn. Code Ann. § 56-9-305(a) and supports a Final Order of Liquidation under Tenn. Code Ann. § 56-9-306.

27. There is no further purpose or justification for continuing to attempt to rehabilitate XHT, and good cause exists for immediate entry of a Final Order of Liquidation, Declaration of Insolvency, and Permanent Injunction.

### III. TERMS OF THE REQUESTED LIQUIDATION ORDER.

28. The terms requested for the Liquidation Order are set out in the Prayer ¶1. The Liquidation Order would continue the powers of the Receiver established through the Rehabilitation Order, and also grant the Receiver, as Liquidator, all the specific and general power of statute and law established in Tenn. Code Ann. §§ 56-9-307 through 337, and otherwise in the Act and Tennessee Code for Receiver/Liquidators. Some of the statutory powers are repeated verbatim, while others are incorporated by reference. The enumerated powers of the Liquidator by statute in any event are not construed as a limitation upon the Liquidator, who has powers to act as may be necessary or appropriate for the accomplishment of, or in aid of, the purpose of liquidation. See Tenn. Code Ann. § 56-9-310(b). The powers of a Liquidator, and the statutory process to be accomplished by the Liquidator, are lengthy and detailed.

29. A liquidation order is a final order under Tenn. Code Ann. § 56-9-307(a): "[t]he liquidator shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. . . ." Notice of the liquidation order, the claims process, and the bar date for claims will have a conclusive effect on the potential creditors.

30. As stated above, all pre-receivership claims of XHT's creditors were received in October and adjudicated in November of 1999. Generally, these claims have been partially satisfied by use of the State loan proceeds (with *de minimis* provider claims paid in full), and certain pre-rehabilitation assets of XHT, as described in the Receiver's Proposed Plan for Payment of Pre-Rehabilitation Provider Debt.

31. In addition, pursuant to Chapter No. 994, Public Acts of 2000, Section 48, Items 3 and 7, a portion of many of these claims have been purchased by the State, in the approximate amount of \$20 million. The Receiver has maintained a database of all of these pre-receivership claims, and does not believe that it is necessary for creditors to re-submit these claims as part of the liquidation process. The Receiver proposes to accept the pre-receivership provider claims submitted pursuant to the September 28, 1999, Scheduling Order, together with any assignments of such claims (either full or partial) to the State of Tennessee, as "Class 2" claims for the liquidation proceeding. See Tenn. Code Ann. § 56-32-217(b) and § 56-9-330(a)(2).

32. Since the beginning of the rehabilitation proceeding, XHT has operated on a reasonable-cost reimbursement basis by virtue of an amendment to XHT's Contractor Risk Agreement. In summary, this amendment (known as Amendment No. 7), terminated

XHT's TennCare operation on a risk basis, and guaranteed that XHT would receive from state and federal funds full reimbursement of all reasonable costs associated with providing access to of medical services for XHT's TennCare enrollees on and after April 1, 1999.<sup>1</sup> With Amendment No. 7 in place, XHT incurred no further debt with respect to its TennCare operations during the rehabilitation proceeding and was able to continue operations for its enrollees.

33. As a consequence of Amendment No. 7, health care providers and other third-parties (including legal counsel, consultants, accountants and other professionals) have continued to provide medical and other services to XHT enrollees and to XHT. In the ordinary course of business, these providers and other third parties have submitted bills, invoices and/or claims to the Receiver and/or XHT for payment. For the purposes of liquidation, the Receiver proposes to treat such claims as administrative expenses pursuant to Tenn. Code Ann. § 56-9-330(a)(1) and afford such claims "Class 1" priority.

34. In addition, the Receiver further anticipates that XHT will continue to receive sufficient funds from the TennCare Bureau to pay all reasonable administrative costs associated

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<sup>1</sup> The text of Amendment No. 7 is now recited in § 3-10.c. of XHT's current Contractor Risk Agreement ("CRA"), and re-stated in § 3-10.h. of Amendment No. 3 to the CRA. (attached hereto as Collective Exhibit 2).

with business operations through July 31, 2003. Moreover, while XHT will cease providing access to medical services to TennCare enrollees at the close of business on July 31, 2003, the Receiver anticipates that XHT will receive bills, invoices and/or claims after that date (the "run-off claims"), which are associated with administrative (including legal counsel, consultants, accountants and other professionals) and healthcare services rendered from April 1, 1999, through July 31, 2003, or the termination date of covered services, whichever is later. The Receiver anticipates that XHT will continue to receive sufficient funds from the TennCare Bureau to pay all reasonable administrative costs (including legal counsel, consultants, accountants and other professionals, and health care provider claims) associated with business operations for processing and administering run-off claims. In recognition of the additional administrative costs described herein, the Receiver and the TennCare Bureau have reached a tentative agreement with respect to the funding of these costs. This agreement is recited in a fourth amendment to the current CRA, and is attached hereto as Exhibit 3. Currently, the Receiver is awaiting approval of this amendment by the federal Centers for Medicare and Medicaid Services.

35. Since the commencement of rehabilitation proceedings, the Receiver and XHT have received certain bills, invoices



and/or claims from providers and other third parties which have been disputed. Most of these disputes have been resolved and paid in the ordinary course of business. However, other claims remain in dispute, and additional claims received in the future may be disputed ("unresolved disputed claims").<sup>2</sup> For these unresolved disputed claims, the Receiver requests -- pursuant to Tenn. Code Ann. § 56-9-327(e) -- that the Liquidation Order (a) direct the Receiver to notify each such claimant in accordance with Tenn. Code Ann. § 56-9-311, and (b) direct each such claimant to submit a sworn Proof of Claim in accordance with Tenn. Code Ann. §§ 56-9-323 and 324 prior to the applicable bar date.

36. The final bar date proposed by the Commissioner for unresolved disputed claims is **February 1, 2004**, at 4:30 p.m. Central Time.

37. The requested Liquidation Order would further continue and make permanent statutory injunctions allowed by Tenn. Code Ann. §§ 56-9-105, 313 and other sections of the Act that prevent

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<sup>2</sup> Currently, a number of provider claims are subject to the independent review process set forth in Tenn. Code Ann. § 56-32-226. Upon the entry of an Order of Liquidation and proper notice to such providers as described in Tenn. Code Ann. § 56-9-311, all pending proceedings before an independent reviewer will be terminated by operation of Tenn. Code Ann. § 56-9-313(a)(1). Any providers who are parties to such pending independent review proceedings will be required to submit their disputed claims to the Receiver pursuant to the Proof of Claim process set forth in Tenn. Code Ann. §§ 56-9-323 and 324, unless otherwise resolved by the Receiver through XHT's normal claims adjudication system.

interference with the Commissioner, and impose those injunctions that allow the liquidation process to be conclusive, and effectuate this Court's powers to draw all claims and matters relating to this insurer and its assets to itself. The requested Liquidation Order would contain all those provisions that the Commissioner deems necessary at this time to effectuate the liquidation and to prevent actions that would harm this process. Liquidation of XHT preserves XHT's rights and causes of action, and is sought without prejudice to the Commissioner's seeking additional relief as permitted by the Act.

38. Pursuant to Tenn. Code Ann. § 56-9-308(a), the requested Liquidation Order would set a coverage cancellation date within 30 days of the date of entry of such Order, assuming approval. The Commissioner will request the coverage cancellation date to be 30 days after the date of entry of such Order.

39. In accordance with the letter dated April 30, 2003, from the Department of Finance and Administration, the Receiver anticipates that all XHT enrollees will be re-assigned by the TennCare Bureau on or about July 31, 2003. The Receiver, however, has no control over the timing of such re-assignment. The Receiver anticipates that notices of such re-assignment will be provided to each enrollee by the TennCare Bureau.

40. The requested Liquidation Order also would direct the Receiver, in the exercise of the Receiver's discretion, to take all steps necessary to effectuate an efficient and orderly wind-down of XHT's operations and business without the disruption of medical care to enrollees or the orderly payment of claims and run-off claims. Such wind-down steps would include, but are not limited to: the cancellation of provider contracts, the cancellation of leases and other professional services contracts, and the termination of employees.

#### IV. CONCLUSION.

41. Based upon the foregoing law and factual circumstances, and the supporting Affidavits and Exhibits, the Commissioner is of the belief and represents that there is no proper basis for continuing rehabilitation of XHT, where further efforts would be futile and produce no additional benefit to enrollees, providers, creditors, or the public. Therefore, the Commissioner respectfully requests that this Court convert this receivership to liquidation and promptly enter a Final Order of Liquidation.

**WHEREFORE**, premises considered, Petitioner prays as follows:

1. That an Order Appointing the Commissioner and her successors in office as Liquidator of Respondent XHT be entered,

declaring XHT to be insolvent, with substantially the following terms:

A. The receivership of Xantus Healthplan of Tennessee, Inc., (also referred to herein as "XHT" or "insurer"), created by Order entered March 31, 1999 for the purposes of rehabilitation, shall continue in full force and effect and that as of the date of entry of this Order of Liquidation, said receivership is converted to a receivership for purposes of liquidation. All powers, authority, and responsibilities of the Commissioner which are granted by the court's previous rehabilitation order, and which are not listed, amended, or augmented in this Liquidation Order, are hereby reaffirmed and continued in Liquidation.

B. The Commissioner of Commerce and Insurance for the State of Tennessee, and her successors in office, is appointed Liquidator of Xantus Healthplan of Tennessee, Inc. for purposes of liquidation as provided by Tenn. Code Ann. §§ 56-9-305, 306, and 307 with all the powers conferred by law on receivers and liquidators of insurers appointed under those statutes. In addition to those powers specifically enumerated in this Final Order of Liquidation and by operation of law under Tenn. Code Ann. §§ 56-9-101 et seq. for liquidators of insurers, the liquidator shall have the power to exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with Tenn. Code Ann. §§ 56-9-101, et seq.

C. Pursuant to Tenn. Code Ann. § 56-9-307, the Commissioner, as liquidator, is authorized and directed (1) to take and continue in possession of all accounts, assets, monies, and property (both tangible and intangible) belonging to, held by and/or in the name of XHT both within and without the State of Tennessee, (2) to continue to be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the accounts, assets, monies, books and records of the insurer, wherever located, as of the date of entry of the rehabilitation order, and any further title or rights in property gained by the Commissioner by virtue of such receivership, and (3) that the Commissioner, as liquidator, continues to have the right to recover the same and reduce

the same to possession and to administer them under the general supervision of the Court.

D. Pursuant to Tenn. Code Ann. § 56-9-307, the rights and liabilities of XHT and of its creditors, policyholders, providers, shareholders, members and all other persons interested in its estate shall become fixed as of the date of the entry of this Order of Liquidation, except as provided in Tenn. Code Ann. §§ 56-9-308 and 326, or otherwise expressly stated herein.

E. **Coverage Cancellation.** Pursuant to Tenn. Code Ann. § 56-9-308, all policies, including bonds and other noncancellable business, in effect at the time of issuance of this Order of Liquidation shall continue in force only for the lesser of: (1) a period of thirty (30) days after the date of entry of the Order of Liquidation; (2) the expiration of the policy coverage; (3) the date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; (4) the liquidator has effected a transfer of the policy obligation pursuant to Tenn. Code Ann. § 56-9-310(a)(10); (5) the date proposed by the liquidator and approved by the Court to cancel coverage. The liquidator proposes and the Court hereby approves that all outstanding policies and coverage be canceled on **[date 30 days after Court enters the Order of Liquidation]**.

F. This Order of Liquidation shall terminate coverage at the time specified in Tenn. Code Ann. § 56-9-308(a) for purposes of any other statute.

G. The Liquidator shall have all the powers enumerated in Tenn. Code Ann. § 56-9-310, including the power to appoint a special deputy or deputies to act for her and to determine their reasonable compensation. One special deputy appointed by the Commissioner is Christopher Burton. The Special Deputy shall have all powers of the Liquidator as granted by this Order and as enumerated in Tenn. Code Ann. § 56-9-310. The Special Deputy shall serve at the pleasure of the Liquidator.

H. The Liquidator shall have the power to employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as the Liquidator may deem necessary to assist in the liquidation.

I. The Liquidator shall have the power to fix reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the Court, and shall have power to pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer.

J. The Liquidator shall have the power to hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which she deems relevant to the inquiry.

K. The Liquidator shall have the power to audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer.

L. The Liquidator shall have the power to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

M. The Liquidator shall have the power to enter into such contracts as are necessary to carry out the Order of Liquidation, and to affirm or disavow any contracts to which the insurer is a party. Further, the Liquidator shall have the authority and discretion to take all steps reasonably necessary to effectuate an efficient and orderly wind-down of XHT's operations and business without the disruption of medical care to enrollees or the orderly payment of claims and run-off claims. Such wind-down steps include, but are not limited to: the cancellation of provider contracts, the cancellation of leases and other

professional services contracts, and the termination of employees.

N. The liquidator shall have the power to continue to prosecute and to institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

O. The Liquidator shall have the power to prosecute any action at law or in equity which may exist on the liquidator's behalf, and/or on behalf of the creditors, members, policyholders or shareholders of the insurer against any person or entity. Pursuant to Tenn. Code Ann. § 56-9-313(b)(1), the Liquidator may, within two (2) years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the instant petition for liquidation.

P. The Liquidator shall have the power to remove any or all records and property of the insurer to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation.

Q. The Liquidator shall have the power under Tenn. Code Ann. §§ 56-9-315, 316, and 317 to avoid fraudulent and preferential transfers.

R. The enumeration of the powers and authority of the Liquidator shall not be construed as a limitation upon the Commissioner or Special Deputy, nor shall it exclude in any manner any right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

S. **Notice.** The Liquidator shall give or cause to be given notice of the Order of Liquidation in accordance with Tenn. Code Ann. § 56-9-311 as soon as possible: (1) by first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business; (2) by first class mail to any guaranty association or foreign guaranty association which

is or may become obligated as a result of liquidation; (3) by first class mail to all insurance agents of the insurer; (4) by first class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last known address as indicated by the records of the insurer; and (5) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.

T. **Claims Deadline.** All pre-receivership provider claims submitted to the Receiver pursuant to the September 28, 1999, Scheduling Order and adjudicated on November 16, 1999, together with any assignments of such claims (either full or partial) to the State of Tennessee are deemed received and accepted as "Class 2" claims pursuant to Tenn. Code Ann. § 56-32-217(b) and § 56-9-330(a)(2), and shall not be re-submitted, reconsidered or re-adjudicated.

All bills, invoices and/or claims submitted to the Receiver and/or XHT pertaining to medical and other authorized services rendered to XHT enrollees and to XHT from April 1, 1999, forward (including run-off claims), shall be treated as administrative expenses pursuant to Tenn. Code Ann. § 56-9-330(a)(1) and designated "Class 1" priority.

Pursuant to Tenn. Code Ann. § 56-9-327(e), and except as otherwise established by the Liquidator with approval of the Court, notice as described by Tenn. Code Ann. § 56-9-311(a) to potential claimants for all unresolved disputed claims (including claims that are subject to pending independent review proceedings pursuant to Tenn. Code Ann. § 56-32-226) shall specify and require claimants to file with the Liquidator sworn Proofs of Claim in accordance with Tenn. Code Ann. §§ 56-9-323 and 324, **on or before 4:30 p.m., Central Time, February 1, 2004 (the "Final Bar Date")**, for purposes of participating in any distribution of assets that may be made on timely filed claims that are allowed in these proceedings.

U. With notice given in accordance with Tenn. Code Ann. § 56-9-311, the distribution of assets of the insurer under Tenn. Code Ann. §§ 56-9-101, et seq. shall be



conclusive with respect to all claimants, whether or not they receive notice.

V. **Protection from Suit.** Pursuant to Tenn. Code Ann. § 56-9-313, no action at law or equity or in arbitration shall be brought against the insurer or Liquidator, whether in Tennessee or elsewhere, nor shall any such existing actions be maintained or further presented or prosecuted after issuance of the Order of Liquidation. All claims must be submitted through the claims process as set forth in the Act, and as further defined in this Order. Whenever, in the Liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the Liquidator may intervene in the action. The Liquidator may defend any action in which the Liquidator intervenes under this section at the expense of the estate of the insurer.

W. **Injunctions.** Pursuant to Tenn. Code Ann. § 56-9-105(a)(1-11), all persons, firms, corporations and associations, including but not limited to, Respondent XHT and its officers, directors, stockholders, members, subscribers, agents, contractors, subcontractors and all other persons with authority over or in charge of any segment of XHT's affairs, are prohibited and permanently enjoined from (1) the transaction of its business, (2) the waste or disposition of its property, (3) the destruction, deletion, modification, or waste of its records, databases or computer files, (4) the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof until further order of this Court, and (5) any other threatened or contemplated action, not permitted under the Act, that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors or shareholders, or the administration of any proceeding under this chapter; and this Court further authorizes the Liquidator to apply outside of Tennessee for the relief described in Tenn. Code Ann. § 56-9-105(a);

X. **Cooperation.** Pursuant to Tenn. Code Ann. § 56-9-106, the officers, managers, directors, trustees, owners, employees, agents, contractors or subcontractors of XHT, and any other persons with authority over or in charge of any segment of its affairs, are ordered and required to

cooperate with the Commissioner in the carrying out of the liquidation. The term "person" shall include any person who exercises control directly or indirectly over activities of the XHT through any holding company, parent company, or other affiliate of XHT. Further, the term "person" shall include any person who exercises control or participation in the activities of the XHT, such as through the record-keeping and computer systems operation relating to the activities of the XHT. "To cooperate" shall include, but shall not be limited to, the following: (1) to reply promptly in writing to any inquiry from the Commissioner requesting such a reply; and (2) to preserve and to make available to the Commissioner any and all books, bank and investment accounts, documents, or other records or information or computer programs and databases or property of or pertaining to XHT and in his or her possession, custody or control. No person shall obstruct or interfere with the Commissioner in the conduct of this liquidation;

Y. Any bank, savings and loan association, financial institution or other person, which has on deposit, in its possession, custody or control any funds, accounts and any other assets belonging to, held by, and/or in the name of XHT, shall immediately transfer title, custody and control of all such funds, accounts, or assets to the liquidator, and are hereby instructed that the Liquidator has absolute control over such funds, accounts and other assets. The Liquidator may change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution shall exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Liquidator's control without the permission of this Court.

Z. Pursuant to Tenn. Code Ann. § 56-9-307(e), the Liquidator shall make financial reports to the Court, which shall be filed within one (1) year of the Order of liquidation, and at least annually thereafter. Financial reports shall include the assets and liabilities of the insurer and all funds received or disbursed by the Liquidator during the current period.

AA. Any person, firm, corporation or other entity having notice of this Order that fails to abide by its terms shall be directed to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order;

BB. No bond is required of the Commissioner as a prerequisite for the filing of this petition or entry of this liquidation order or for the issuance of any injunction, restraining order, or additional order issued as provided by Tenn. Code Ann. § 20-13-101, and;

CC. That this Liquidation Order is permanent and a final order and entitled to full faith and credit pursuant to U.S. Const. Art. IV, § 1 and 28 U.S.C. § 1738 in the state and federal courts of each of the United States.

DD. That this Liquidation Order be posted on the Tennessee Department of Commerce and Insurance website.

2. That, pursuant to Tenn. Code Ann. § 56-9-305(a), the director of XHT be afforded the opportunity to respond to this Petition in accordance with the local rules respecting motions, and that consequently the requested Order may be entered if no response hereto is timely filed, and that an appropriate early hearing date be scheduled for this Petition;

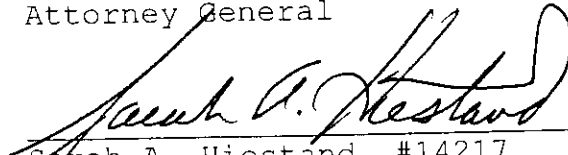
3. That the requested Order be entered without cost bond as provided by Tenn. Code Ann. § 20-13-101;

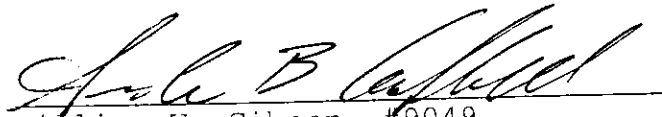
4. That the Commissioner be permitted to apply to the Court for any further orders which may be necessary to implement the terms of the Liquidation Order, or in aid thereof, to which the Commissioner may be entitled; this Court to retain

jurisdiction for the purpose of granting such further relief as from time to time shall be deemed appropriate.

Respectfully submitted by,

PAUL G. SUMMERS  
Attorney General

  
Sarah A. Hiestand, #14217  
**Office of Attorney General**  
Financial Division, Senior Counsel  
P.O. Box 20207  
Nashville, Tennessee 37202-0270  
(615) 741-6035

  
William W. Gibson, #9049  
Andrew B. Campbell, #14258  
**WYATT, TARRANT & COMBS, LLP**  
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Nashville, Tennessee 37203  
(615) 244-0020

Jones Wilson Luna, #5780  
Jennifer Brundidge, #20673  
**FARMER & LUNA, PLLC**  
333 Union Street, Suite 300  
Nashville, Tennessee 37201  
(615) 254-9146

Counsel for Commissioner and  
Rehabilitator Paula A. Flowers,  
and Special Deputy Receivers  
Christopher Burton and David  
Manning

IN THE CHANCERY COURT FOR DAVIDSON COUNTY TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, SITTING IN NASHVILLE

STATE OF TENNESSEE, ex rel.	)	
PAULA A. FLOWERS,	)	
	)	
Petitioner,	)	
	)	
v.	)	No: 99-917-II
	)	
XANTUS HEALTHPLAN OF	)	
TENNESSEE,	)	
	)	
Respondent.	)	

**VERIFICATION**

1. I, Paula A. Flowers, am the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee and in such official capacity have been acting as the Rehabilitator of Xantus Healthplan of Tennessee, Inc. ("XHT").

2. I have read the foregoing Motion to Convert Rehabilitation to Liquidation; and Verified Petition for Final Order of Liquidation, Declaration of Insolvency and Permanent Injunction, and swear that the information contained therein is true and correct to the best of my knowledge, information and belief, including information from the Special Deputy Rehabilitator and the receivership staff. As stated in that Petition, I have determined that XHT remains hazardous financially to its policyholders, its creditors and the public; that XHT is insolvent; and that further attempts to rehabilitate XHT would substantially increase the risk of loss to creditors,

policyholders and the public, and/or would be futile. I accordingly respectfully request that the Court enter a Final Order of Liquidation as prayed for in the foregoing Petition at the earliest opportunity based on the circumstances set forth in the foregoing Petition.

Paula A. Flowers

Paula A. Flowers  
Commissioner of Commerce and  
Insurance for the State of  
Tennessee

Sworn to and subscribed before me  
this the 2nd day of June 2003.

Tammy Fulwider  
Notary Public

My Commission Expires:

7/24/2004

# CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing has been posted on the website of the Department of Commerce and Insurance ("www.state.tn.us/commerce"), and mailed, first-class, postage prepaid, on this 2<sup>nd</sup> day of June, 2003, to the following:

## Attorneys for Xantus Corporation

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201 Fourth Avenue, North  
Suite 1420  
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Harlan Dodson III, Esq.  
Richard R. Dinkins, Esq.  
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Joseph F. Welborn, III  
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Robert W. Ritchie, Esq.  
606 West Main Street  
Knoxville, Tennessee 37902

## Attorneys for Other Interested Parties

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Nashville, Tennessee 37219-2319

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211 Union Street, Suite 916  
Nashville, Tennessee 37201

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Vanderbilt University, General Counsel  
2100 West End Avenue, Suite 750  
Nashville, Tennessee 37203

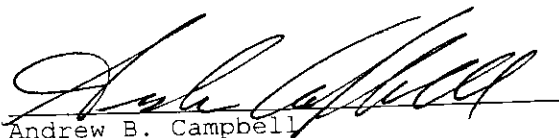
Darrell L. West, Esq.  
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Suite 300  
Nashville, Tennessee 37201

Blakeley D. Matthews, Esq.  
511 Union Street, Suite 2700  
P.O. Box 190695  
Nashville, Tennessee 37219

Thomas J. Catliota, Esq.  
Andrew J. Love, Esq.  
Shaw Pittman  
2300 N Street, N.W.  
Washington, D.C. 20037

## Counsel for the Special Master

W. David Broemel, Esq.  
Boult, Cummings, Connors & Berry PLC  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219

  
Andrew B. Campbell

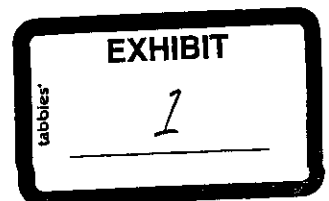
IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

STATE OF TENNESSEE, ex rel.       )  
PAULA A. FLOWERS,                    )  
  )  
Petitioner,                            )  
  )  
v.                                        ) No: 99-917-II  
  )  
XANTUS HEALTHPLAN OF                )  
TENNESSEE,                            )  
  )  
Respondent.                            )

AFFIDAVIT OF CHRISTOPHER BURTON

Having been duly sworn, I, Christopher Burton, attest as follows:

1. I am of majority age and have personal knowledge of the contents of this Affidavit.
2. I am a Special Deputy Rehabilitator of Xantus Healthplan of Tennessee, Inc. ("XHT"), having been appointed to that position pursuant to Tenn. Code Ann. § 56-9-303(a) on February 1, 2003. I submit this Affidavit in support of the Petition for Liquidation of XHT.
3. XHT is a for-profit health maintenance organization which currently participates in the TennCare program of the State of Tennessee pursuant to a Contractor Risk Agreement with the Department of Finance and Administration.
4. As reported to the Court in the Notice of Termination of Contractor Risk Agreement (filed 4/30/03), the Receiver has





been advised by the Tennessee Department of Finance and Administration that the TennCare Bureau will terminate XHT's Contractor Risk Agreement effective July 31, 2003. To this end, the TennCare Bureau has notified XHT providers, hospitals and pharmacists that, effective July 31, 2003, XHT will no longer be participating in the TennCare program. Copies of these Notices are attached hereto as Exhibits A-C. The Department of Finance and Administration further advised the Receiver to prepare and submit a termination plan to the TennCare Bureau, with respect to re-assignment of XHT enrollees and other wind-down issues..

5. Currently, XHT receives 100% of its revenue from the State's TennCare program. Upon the termination of the Contractor Risk Agreement, XHT will have no further source of revenue to conduct business on an on-going basis.

6. Currently, XHT is insolvent. As of March 31, 2003, XHT's pre-receivership assets are \$10,452,605.00. As of March 31, 2003, XHT has a negative net worth of \$74,582,492.00.

7. I am advised by the Department of Commerce and Insurance that, in order to comply with its statutory net worth requirement, XHT must maintain a positive net worth of \$8,820,978.00.

8. I understand that, beginning in 2001, the Receiver and her prior Special Deputies investigated the possibility of selling XHT to a suitable third-party in an effort to reduce the

outstanding debt of the company to its creditors and provide sufficient capital for XHT to meet its statutory net worth requirements. At this time, there are no offers to purchase XHT, and there is no reasonable possibility of selling XHT at a price sufficient to reduce the outstanding debt of the company to its creditors and provide sufficient capital for XHT to meet its statutory net worth requirements.

Further the affiant sayeth not:

Christopher Burton

Christopher Burton

Special Deputy Receiver

Sworn to and subscribed before me

this the 30<sup>th</sup> day of May, 2003.

Shelly G. Burton

Notary Public

My Commission Expires:

March 26, 2005



STATE OF TENNESSEE  
**BUREAU OF TENNCARE**  
729 CHURCH STREET  
Nashville Tennessee 37247-6501

## **Xantus Healthplan is leaving TennCare August 1, 2003.**

**Going forward until the end of the transition period, TennCare will ensure that Xantus providers are reimbursed for covered services provided to Xantus members.**

Please continue to provide health care to Xantus members during this transition period.

**Effective July 31, 2003 at midnight local time**, Xantus will no longer be participating in the TennCare program. Xantus will be responsible for all services rendered through July 31, 2003.

**Beginning August 1, 2003 at 12:01 AM local time**, all current Xantus enrollees will be assigned to **TennCare Select**. The BHO for TennCare Select is Premier Behavioral Health Systems of Tennessee. This will not be a change in BHOs for the affected enrollees.

Enrollees may remain with their current PCPs, specialists, and other health care providers for up to 30 days even if they are **not** a member of the TennCare Select network.

Women who are pregnant may keep seeing their pregnancy-care physician for the duration of the pregnancy and six (6) weeks post-partum care.

Current TennCare eligibility status should be confirmed via TennCare online eligibility verification or by calling TennCare Select Provider Services. A Xantus card may be accepted as validation of membership in TennCare Select for currently eligible individuals until permanent ID cards are received.

The transition of enrollees will be similar to what occurs during the optional MCO change period. **All services rendered up to and including July 31** are to be submitted to Xantus. **Claims and questions for dates of service August 1 and after** are to be submitted to TennCare Select.

### **What this means to you –**

- If you are already a part of the TennCare Select provider network, you do not have to do anything else. You will follow the same procedures for claims filing, prior authorization, and so forth, as you currently do. Beginning August 1, you will be reimbursed at TennCare Select rates.
- If you are not a TennCare Select provider and would like to join, please call the appropriate phone number listed below. They will provide you with the information you need to know.
- If you decide not to join the TennCare Select network, contact TennCare Select regarding rates of reimbursement for care provided during the 30-day transition period.
  - In Nashville 615-386-8630
  - TennCare Select Provider Services: 1-800-276-1978
  - Fax Line: 1-800-218-3190
  - Prior Notification/Authorization: 1-800-711-4104
  - Website: [www.BCBST.com](http://www.BCBST.com)
  - Address to mail claims: P.O. Box 182277  
Chattanooga, TN 37422-7277

You are under **no obligation** to join the TennCare Select provider network.

TennCare will be reviewing prospective reimbursement rates for TennCare Select.

### **Key Dates to Remember**

**July 31, 2003:**

Xantus ends TennCare participation. **All services provided up to and including today are to be submitted to Xantus for processing.**

**August 1, 2003:**

All enrollees who were in Xantus are now TennCare Select members. **Claims and questions for dates of service August 1 and after are to be submitted to TennCare Select.**

The Bureau of TennCare appreciates your continuing participation in the TennCare Program. Your assistance and patience during this time of change is also greatly appreciated.

**EXHIBIT**

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A



STATE OF TENNESSEE  
**BUREAU OF TENNCARE**  
729 CHURCH STREET  
Nashville Tennessee 37247-6501

## **Xantus Healthplan is leaving TennCare August 1, 2003.**

Going forward until the end of the transition period, TennCare will ensure that Xantus providers are reimbursed for covered services provided to Xantus members.

Please continue to provide health care to Xantus members during this transition period.

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**Beginning August 1, 2003 at 12:01 AM local time**, all current Xantus enrollees will be assigned to **TennCare Select**. The BHO for TennCare Select is Premier Behavioral Health Systems of Tennessee. This will not be a change in BHOs for the affected enrollees.

Enrollees may remain with their current PCPs, specialists, and other health care providers for up to 30 days even if they are **not** a member of the TennCare Select network.

Current TennCare eligibility status should be confirmed via TennCare online eligibility verification or by calling TennCare Select Provider Services. A Xantus card may be accepted as validation of membership in TennCare Select for currently eligible individuals until permanent ID cards are received.

The transition of enrollees will be similar to what occurs during the optional MCO change period.

**All services rendered up to and including July 31** are to be submitted to Xantus. **Claims and questions for dates of service August 1 and after** are to be submitted to TennCare Select. If an enrollee is hospitalized in July and remains an inpatient on August 1, you will need to **split bill those services**. This is the same procedure utilized in the past for optional MCO change periods.

### **What this means to you –**

- If you are already a part of the TennCare Select provider network, you do not have to do anything else. You will follow the same procedures for claims filing, prior authorization, and so forth, as you currently do. Beginning August 1, you will be reimbursed at TennCare Select rates.
- If you are not a TennCare Select provider and would like to join, please call the appropriate phone number listed below. They will provide you with the information you need to know.
- If you decide not to join the TennCare Select network, contact TennCare Select regarding rates of reimbursement for care provided during the 30-day transition period.

In Nashville	615-386-8630
TennCare Select Provider Services:	1-800-276-1978
Fax Line:	1-800-218-3190
Prior Notification/Authorization:	1-800-711-4104
Website:	www.BCBST.com
Address to mail claims:	P.O. Box 182277 Chattanooga, TN 37422-7277

You are under **no obligation** to join the TennCare Select provider network.

TennCare will be reviewing prospective reimbursement rates for TennCare Select.

### **Key Dates to Remember**

**July 31, 2003**

Xantus ends TennCare participation. **All services provided up to and including today are to be submitted to Xantus for processing.**

**August 1, 2003:**

All enrollees who were in Xantus are now TennCare Select members. **Claims and questions for dates of service August 1 and after** are to be submitted to **TennCare Select**.

The Bureau of TennCare appreciates your continuing participation in the TennCare Program.  
Your assistance and patience during this time of change is also greatly appreciated.

**EXHIBIT**

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B



STATE OF TENNESSEE  
**BUREAU OF TENNCARE**  
 729 CHURCH STREET  
 Nashville Tennessee 37247-6501

## SPECIAL PHARMACY NOTICE

### **Xantus Healthplan is leaving TennCare August 1, 2003.**

Going forward until the end of the transition period, TennCare will ensure that Xantus providers are reimbursed for covered services provided to Xantus members.

Please continue to provide health care to Xantus members during this transition period.

Effective July 31, 2003 at midnight local time, Xantus will no longer be participating in the TennCare program. Xantus will be responsible for all pharmacy services provided through July 31. Beginning August 1, 2003 at 12:01 AM local time, all current Xantus members will be assigned to TennCare Select.

All pharmacy services provided on or before July 31 should be submitted to Xantus' pharmacy claims processor, **ScripSolutions (MIM)**. For dates of service August 1 and after, all pharmacy claims for current Xantus members should be submitted to the pharmacy claims processor for TennCare Select, **AdvancePCS**. Behavioral health pharmacy claims and pharmacy claims for members with both TennCare and Medicare eligibility (duals) should continue to be submitted to Consultec (ACS) for processing.

While Xantus and TennCare Select attempt to transfer prior approvals for non-formulary drugs, pharmacists are reminded of their responsibilities under the Grier Consent Decree. If the pharmacy is unable to contact a prescriber when a current Xantus member presents a non-formulary prescription for a normally covered therapeutic class, then the member should be given up to a 14-day supply of the medication along with a pharmacy appeal form ("Drug Store Notice").

Current TennCare eligibility status should be confirmed via TennCare online eligibility verification or by calling TennCare Select Provider Services. A Xantus card may be accepted as validation of membership in TennCare Select for currently eligible individuals until permanent ID cards are received.

### **Key Dates to Remember**

<b>July 31, 2003:</b>	Xantus ends TennCare participation. <b>All pharmacy services provided up to and including today</b> are to be submitted to <b>ScripSolutions</b> (Xantus) for processing.
<b>August 1, 2003:</b>	All members who were in Xantus are now TennCare Select members. <b>All pharmacy claims for dates of service on and after August 1</b> should be submitted to <b>AdvancePCS</b> (TennCare Select) for processing.

**Note:** Behavioral health pharmacy claims and pharmacy claims for members with both TennCare and Medicare eligibility (duals) should continue to be submitted to Consultec (ACS) for processing.

In Nashville, call (615) 386-8630

TennCare Select Provider Services:  
 Prior Notification/Authorization:  
 AdvancePCS Bank Identification Number (RXBIN):  
 AdvancePCS Group Number:

1-800-276-1978  
 Phone 1-800-762-2299 – Fax 1-800-354-5979  
 610415  
 TENNCARE

The Bureau of TennCare appreciates your continuing participation in the TennCare Program. Your assistance and patience during this time of change is also greatly appreciated.

**EXHIBIT**

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AMENDED AND RESTATED CONTRACTOR RISK AGREEMENT BETWEEN

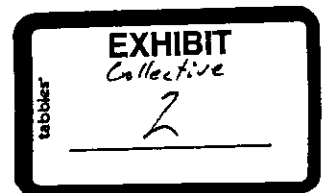
THE STATE OF TENNESSEE,  
d.b.a. TENNCARE

AND

XANTUS HEALTHPLAN OF TENNESSEE, INC.,  
d.b.a XANTUS HEALTHPLAN OF TENNESSEE, INC.

CONTRACT NUMBER: FA\_\_\_\_\_

July 1, 2001



- 3-10.c.2.(a)(1) Health plan risk assessment scores will be initially recalibrated after the close of the Spring 2001 open enrollment choice period for application to payment rates effective on the date enrollment changes become effective.
- 3-10.c.2.(a)(2) This recalibration will be based upon the distribution of enrollment the first day after completion of the open enrollment choice period and health status information will be derived from encounter data submitted by the CONTRACTOR and the other health plans through the most recent twelve month period deemed appropriate by the State's actuary.
- 3-10.c.2.(a)(3) An individual's health status will be determined using the Chronic Disease and Disability Payment System (CDPS) software. In the event the State elects to use a different system to calculate an adjustment for health plan risk, the State agrees to provide the CONTRACTOR with an opportunity to review and comment on the proposed system prior to its implementation.
- 3-10.c.2.(a)(4) The adjustment allowed on the risk adjustment payment rates described in 2(a)(1) and 2(a)(2) above may vary as much as 5% from average, consequently, changes in payment rates resulting from changes in population mix may vary as much as 10.53% of rates displayed in the current calculation.
- 3-10.c.2.(a)(5) Health plan risk assessment scores will be recalibrated using the same process on an annual basis, following the annual choice period, using updated encounter and eligibility data.
- 3-10.c.2.(a)(6) In addition to the annual recalibration of risk adjustment factors, those factors will be updated when there is a significant change in program participation. This may occur when a health plan enters or leaves a region. If a plan withdraws from a region, that plan's membership will be distributed to the remaining health plans or to new plans. New risk adjustment values for the remaining plans or new plan(s) will be calculated that consider the population that will be enrolled in the plan for the remainder of the contract year only. In this instance, plans would be given the option to provide TENNCARE, in writing, with a six (6) months notice of termination. This is the only instance when plans would be given the opportunity to give a notice of termination outside of the provisions in Section 4-2.f. of this Agreement. This notice option is not available for rate adjustments as described in Sections 3-10.b.2.(a)(1) through 3-10.b.2.(a)(5).
- 3-10.c.2.(a)(7) In the event an annual choice period is postponed or delayed, TENNCARE agrees health plan risk assessment scores will be recalibrated within eighteen months of the last recalibration.

Without affecting TennCare rights of termination, effective with, and in accordance with, an Order appointing a Receiver/rehabilitator for CONTRACTOR approved by a court of competent jurisdiction, the CONTRACTOR shall continue to perform all duties required pursuant to the terms of this Agreement and shall continue to process all claims for services provided in accordance with the existing subcontract and/or provider agreement terms and payment rates not

to exceed the current contracted payment rates unless approved by TENNCARE. Effective with, and in accordance with, an Order appointing a Receiver/rehabilitator for CONTRACTOR approved by a court of competent jurisdiction, TENNCARE shall, during the period of rehabilitation, make payments to the CONTRACTOR for the actual cost of benefits and administrative services and not the capitated rate in the Agreement. Said services shall include all TennCare covered services as described in this Agreement as well as non-TennCare covered services that would have been provided as additional benefits by the CONTRACTOR at its own expense, during any period of rehabilitation. Notwithstanding anything to the contrary contained herein and consistent with Section 4-25, in no event shall TENNCARE be responsible, either directly or indirectly, to any subcontractor or any other party who may provide the services described herein.

On April 7, 1999, the State shall make an advance payment to CONTRACTOR for the month of April equal to the amount the State would have paid on a capitated basis for the month of April. For each month thereafter, the State shall advance to the CONTRACTOR, by the 5<sup>th</sup> working day of each month, the amount the State would have paid on a capitated basis for each month. Pursuant to a schedule developed by the State and approved by HCFA, the State shall determine the actual costs of benefits and administrative services provided and shall reconcile future payments to the CONTRACTOR so that the CONTRACTOR is paid actual costs for the benefit and administrative costs for the period. This methodology of compensation shall remain in effect only for such period of time that the CONTRACTOR remains in rehabilitation.

This Amendment and the method of payment described herein shall have no applicability whatsoever to any service delivered or any claim incurred prior to April 1, 1999.

### **3-10.d. Withhold of the Capitation Rate**

The purpose of the withhold is to assure CONTRACTOR compliance with all TENNCARE requirements, including the requirements of Section 2-3 Benefits/Service Requirements and Limitations, Section 2-9.d TennCare Quality Monitoring/Quality Improvement (QM/QI) Program and Attachment II Quality of Care Monitors of this Agreement, by establishing an agreed incentive for assuring CONTRACTOR compliance with the terms of this Agreement. If TENNCARE has not identified CONTRACTOR compliance deficiencies, TENNCARE will pay to the CONTRACTOR the withhold of the plan's payments withheld in the month subsequent to the withhold. The amount of the withhold will be determined as follows:

- 3-10.d. 1. For MCOs that executed the September 11, 1995 TennCare/MCO Contractor Risk Agreement, the initial withhold amount will be the amount that is currently being applied to the MCO as of June 30, 2001. For all other MCOs, the initial withhold amount will be ten percent (10%) of the monthly capitation payment;
- 3-10.d. 2. If TENNCARE determines that the CONTRACTOR has no deficiencies for six (6) consecutive months, the monthly withhold amount will be reduced to five percent (5%).
- 3-10.d. 3. After twelve months, if the CONTRACTOR's withhold amount was previously reduced to five percent (5%) and no intermediate sanctions, including liquidated damages have been applied to the CONTRACTOR, the monthly withhold amount will be reduced to two and one half percent (2.5%).
- 3-10.d. 4. If TENNCARE determines that the CONTRACTOR has one (1) or more deficiencies in a given month, the amount of monthly withhold will be ten percent (10%) for each month that a deficiency exists and for six (6) consecutive months after the deficiency is



IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures.

STATE OF TENNESSEE  
DEPARTMENT OF FINANCE  
AND ADMINISTRATION

BY: ME Reynolds

Mark E. Reynolds  
Deputy Commissioner

DATE: Jun 28, 2001

XANTUS HEALTHPLAN OF TENNESSEE,  
INC.

BY: Richard Sandstrom

Richard Sandstrom  
Special Deputy Receiver

DATE: June 28, 2001

STATE OF TENNESSEE  
DEPARTMENT OF FINANCE  
AND ADMINISTRATION

BY: C. Warren Neel

C. Warren Neel  
Commissioner

DATE: 6/29/01

APPROVED BY:

STATE OF TENNESSEE  
DEPARTMENT OF FINANCE  
AND ADMINISTRATION

BY: C. Warren Neel

C. Warren Neel  
Commissioner

DATE: 6-29-01

APPROVED BY:

STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY

BY: John G. Morgan

John G. Morgan  
Comptroller

DATE: 7/3/01

### AMENDMENT NUMBER 3

AMENDED AND RESTATED CONTRACTOR RISK AGREEMENT  
BETWEEN  
THE STATE OF TENNESSEE,  
d.b.a. TENNCARE  
AND  
XANTUS HEALTHPLAN OF TENNESSEE, INC.,

CONTRACT NUMBER: FA-02-14779-03

For and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to clarify and/or amend the Amended and Restated Contractor Risk Agreement by and between the State of Tennessee TennCare Bureau, hereinafter referred to as TENNCARE, and Xantus Healthplan of Tennessee, Inc., hereinafter referred to as the CONTRACTOR, as follows:

Titles and numbering of paragraphs used herein are for the purpose of facilitating use of reference only and shall not be construed to infer a contractual construction of language.

This Amendment shall establish the financial terms and conditions governing the agreement between the State and the CONTRACTOR pursuant to the CRA for the period July 1, 2002 through December 31, 2003. Execution of this Amendment shall not relieve the CONTRACTOR of its obligation to satisfy any outstanding responsibilities under the CRA prior to the effective date of this Amendment. Satisfaction of any outstanding responsibilities shall be the financial responsibility of the CONTRACTOR including, but not limited to, payment for the provision of services or reimbursement of an enrollee in response to an appeal filed prior to July 1, 2002 related to the denial of a service that otherwise could have been provided prior to July 1, 2002, payment of subcontractors and capitated providers for services provided prior to July 1, 2002, and payment of claims with dates of service prior to July 1, 2002 (unless the claim is for payment of a service on behalf of an enrollee who was enrolled after June 30, 2002 with an effective date prior to July 1, 2002). Likewise, the CONTRACTOR shall be entitled to retain interest income, reinsurance recovery amounts, pharmacy rebates, and third party liability recoveries applicable to services incurred prior to July 1, 2002 in accordance with the terms of the CRA, as amended, prior to the execution of this Amendment.

1. Section 1-3 shall be amended by adding new definitions for "Administrative Fee Payment", "Administrative Rate", "Medical Fund Target", "Medical Management Policies and Procedures", "Non-Risk" and "Stabilization Period", by deleting and replacing the definitions for "Administrative Cost", "Medical Expenses", "Savings", "Capitation Payment", and "Capitation Rate", and by deleting the definition for "TennCare Revenue", so that the new and amended definitions shall read as follows:

Administrative Cost – All costs to the CONTRACTOR related to the administration of this Agreement that are non-medical in nature including, but not limited to:

- Satisfying Contractor Qualifications specified in Section 2-2;
- Establishing and Maintaining a Provider Network in accordance with the Access and Availability requirements specified in Section 2-3.b, Attachment III and Attachment IV and requirements for the delivery of Specialized Services specified in Section 2-3.c;
- Determination and production of recoveries from Third Party Liability resources in accordance with Section 2-9.e.6;
- Claims Processing in accordance with Section 2-9.g;

### Amendment 3 (continued)

volunteers, subcontractors, or anyone acting for or on behalf of the CONTRACTOR, TENNCARE may retroactively recover capitation amounts plus interest, as allowed by TCA 47-14-103, and any other monies paid to any managed care organization for the enrollment of that individual. The refund of capitation payments plus interest will not preclude the State from exercising its right to criminal prosecution, civil penalties, trebled damages and/or other remedial measures.

#### **3-10.h. Stabilization Period Payment Terms and Conditions**

The period from July 1, 2002 through December 31, 2003 shall be referred to as the "Stabilization Period". During the Stabilization Period, CONTRACTOR will be paid in accordance with the Amended and Restated CRA, as amended.

Without affecting TENNCARE rights of termination, effective with, and in accordance with, an Order appointing a Receiver/rehabilitator for CONTRACTOR approved by a court of competent jurisdiction, TENNCARE shall, during the period of rehabilitation, make payments to the CONTRACTOR for the actual cost of benefits and administrative services. Said services shall include all TennCare covered services as described in this Agreement as well as non-TennCare covered services that would have been provided as additional benefits by the CONTRACTOR at its own expense, during any period of rehabilitation. Notwithstanding anything to the contrary contained herein, in no event shall TENNCARE be responsible, either directly or indirectly, to any subcontractor or any other party who may provide the services described herein. The method of payment described herein shall have no applicability whatsoever to any service delivered or any claim incurred prior to April 1, 1999. The CONTRACTOR shall provide a detailed cost allocation plan for administrative costs incurred in the form, content, media and within the time frames as specified by TENNCARE. The CONTRACTOR shall be responsible for providing any additional information not otherwise specified in this Agreement in a timely manner as requested by the Receiver/rehabilitator, TENNCARE, or CMS.

In the event that the payment terms and conditions of the Stabilization Period including the Administrative fee specified in Section 3.10.h.1 and the amount of the Medical Fund Targets specified in Section 3.10.h.4 have not been established by July 1, 2002, the CONTRACTOR agrees to accept the capitation payment rates specified in Attachment X.A effective July 1, 2002. The CONTRACTOR agrees to reconcile said capitation payments (reduced by the amount of the Administrative fee to be specified in Section 3.10.h.1 and applicable taxes which will be retained by the CONTRACTOR), to actual expenditures for medical services with dates of service from July 1, 2002 through the date of implementation of the payment terms specified in Section 3-10.h, within ninety (90) days of the end of this payment arrangement. Capitation payments are subject to TCA 56-32-224. The CONTRACTOR is responsible for making any payments required pursuant to TCA 56-32-224. The CONTRACTOR and TENNCARE shall mutually agree upon the form and format of the reconciliation. Said reconciliation may be subject to audit by the State, including the Comptroller of the Treasury or any of the State's Contractors or Agents. For the period beginning July 1, 2002 during which capitation payments are made: (1) To the extent that actual expenditures for medical expenses exceed total capitation payments (reduced by the Administrative fee and applicable taxes which will be retained by the CONTRACTOR), TENNCARE will pay the difference to the CONTRACTOR within thirty (30) days of receipt of the reconciliation; and (2) To the extent that actual expenditures for medical expenses were less than the total capitation payments (reduced by the Administrative fee and applicable taxes which will be retained by the CONTRACTOR), the CONTRACTOR agrees to pay the difference to TENNCARE within thirty (30) days of completion of the reconciliation.

STATE OF TENNESSEE  
DEPARTMENT OF FINANCE  
AND ADMINISTRATION

BY: C. Warren Neel  
C. Warren Neel  
Commissioner

DATE: 7/1/02

APPROVED BY:

STATE OF TENNESSEE  
DEPARTMENT OF FINANCE  
AND ADMINISTRATION

BY: C. Warren Neel  
C. Warren Neel  
Commissioner

DATE: JUL 01 2002

XANTUS HEALTHPLAN OF TENNESSEE, INC.

BY: Richard Sandstrom  
Richard Sandstrom  
Special Deputy Rehabilitator

DATE: 6-28-02

BY: David Manning  
David Manning  
Special Deputy Rehabilitator

DATE: 6/28/02

APPROVED BY:

STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY

BY: John G. Morgan  
John G. Morgan  
Comptroller

DATE: 7-1-02

**AMENDMENT NUMBER 4**  
**AMENDED AND RESTATED CONTRACTOR RISK AGREEMENT**  
**BETWEEN**  
**THE STATE OF TENNESSEE,**  
**d.b.a. TENNCARE**  
**AND**  
**XANTUS HEALTHPLAN OF TENNESSEE, INC.,**  
**d.b.a. XANTUS HEALTHPLAN OF TENNESSEE, INC.**  
**CONTRACT NUMBER: FA-02-14779-04**

For and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to clarify and/or amend the Amended and Restated Contractor Risk Agreement by and between the State of Tennessee TennCare Bureau, hereinafter referred to as TENNCARE, and Xantus Healthplan of Tennessee, Inc., hereinafter referred to as the CONTRACTOR, as follows:

Titles and numbering of paragraphs used herein are for the purpose of facilitating use of reference only and shall not be construed to infer a contractual construction of language.

1. Section 3-10.h. of the July 1, 2001 Amended and Restated Contractor Risk Agreement, as amended, shall be amended by adding the following to the end of the second paragraph in 3-10.h.

Upon the termination of this Agreement by TennCare effective as of July 31, 2003, the method of payment for medical services costs described herein shall remain applicable for:

- (i) any claims incurred for TennCare covered medical services on or before the effective termination date, and
- (ii) any claims for continued services required by TennCare pursuant to Section 4-2.g.7 of the Amended and Restated Contractor Risk Agreement.

Upon any such termination, administrative costs shall be paid in accordance with the method of payment described herein for:

- (i) reasonable costs incurred on or before the effective date of such termination,
- (ii) reasonable costs incurred after the effective date of such termination through any period of liquidation for administering claims incurred on or before the effective date of such termination, and
- (iii) reasonable costs incurred administering any claims for continued services required by TennCare pursuant to the terms of this Agreement.



All of the provisions of the original Agreement not specifically deleted or modified herein shall remain in full force and effect. Unless a provision contained in this Amendment specifically indicates a different effective date, for purposes of the provisions contained herein, this Amendment shall become effective as of May 7, 2003, subject to approval by the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures.

STATE OF TENNESSEE  
DEPARTMENT OF FINANCE  
AND ADMINISTRATION

BY: \_\_\_\_\_  
*Manny Martins*  
*Deputy Commissioner*

DATE: \_\_\_\_\_

XANTUS HEALTHPLAN OF TENNESSEE,

BY: \_\_\_\_\_  
*Chris Burton*  
*Special Deputy Receiver*

DATE: \_\_\_\_\_

STATE OF TENNESSEE  
DEPARTMENT OF FINANCE  
AND ADMINISTRATION

BY: \_\_\_\_\_  
*M.D. Goetz, Jr.*  
*Commissioner*

DATE: \_\_\_\_\_

APPROVED BY:  
STATE OF TENNESSEE

BY: \_\_\_\_\_  
*M.D. Goetz, Jr.*  
*Commissioner*  
DATE: \_\_\_\_\_

APPROVED BY:  
STATE OF TENNESSEE

BY: \_\_\_\_\_  
*John G. Morgan*  
*Comptroller*  
DATE: \_\_\_\_\_